

AMENDED IN SENATE APRIL 4, 2013

SENATE BILL

No. 487

Introduced by Senator Calderon

February 21, 2013

An act to amend Sections 3700.1, 3701, 3701.3, 3701.5, 3701.7, 3701.8, 3702, 3702.5, 3702.8, 3702.10, 3741, 3742, 3744, 3745, and 3746 of, to amend, renumber, and add Section 3740 to, to amend, repeal, and add Section 3743 to, and to add Sections 3701.85 and 3742.5 to, the Labor Code, relating to workers' compensation insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 487, as amended, Calderon. Workers' compensation insurance: Self-Insured Group Security Fund.

Existing law generally requires an employer to compensate, without regard to negligence, an employee for an injury sustained by the employee if the injury arose out of, and in the course of, employment, as specified.

Existing law requires each employer, except as specified, to secure the payment of compensation by either being insured against liability to pay compensation, or by securing from the Director of Industrial Relations a certificate of consent to self-insure, either as an individual employer, or as one employer in a group of employers. Existing law establishes the Self-Insurers' Security Fund, governed by an 8-member board of trustees and administered by the Director of Industrial Relations, to provide for the continuation of workers' compensation benefits delayed as a result of the failure of a private, self-insured employer to meet its compensation obligations when the employer's security deposit is either inadequate or not immediately accessible for the payment of benefits. Existing law requires every private, self-insuring

employer to secure incurred liabilities for the payment of workers' compensation by making a deposit based on estimated future liability for compensation. Existing law authorizes an alternative security system established by regulations adopted by the director whereby private insurers can collectively secure their aggregate liabilities, as specified.

This bill would distinguish between individual self-insured employers and groups of self-insured employers by creating a separate Self-Insured Group Security Fund for group self-insured employers that is similar to the existing Self-Insurers' Security Fund structure, which would continue, but only for individual self-insured employers. The bill would authorize a similar alternative security system to be established by regulations adopted by the director whereby group self-insured employers may collectively secure their aggregate liabilities, as specified. The bill would establish the Self-Insured Group Security Fund as a nonprofit mutual benefit corporation, governed by a 7-member board of trustees, and provide similar powers and authority as is provided to the existing Self-Insurers' Security Fund. The bill would make additional conforming changes. The bill would state the intent of the Legislature in this regard.

~~Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.~~

~~This bill would express the intent of the Legislature to enact legislation to establish a Self-Insured Group Security Fund for purposes of workers' compensation insurance.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 3700.1 of the Labor Code is amended to
- 2 read:
- 3 3700.1. As used in this article:
- 4 (a) "Director" means the Director of Industrial Relations.
- 5 ~~(b) "Private self-insurer" means a private employer which has~~
- 6 ~~secured the payment of compensation pursuant to Section 3701.~~
- 7 (b) "Fund" means the Self-Insurers' Security Fund established
- 8 pursuant to Section 3742.

1 (c) “Fund member” means a stand-alone self-insured employer
2 which participates in the Self-Insurers’ Security Fund.

3 (e)

4 (d) ~~“Trustees”~~ “Fund trustees” means the Board of Trustees of
5 the Self-Insurers’ Security Fund.

6 ~~(d) “Member” means a private self-insurer which participates~~
7 ~~in the Self-Insurers’ Security Fund.~~

8 (e) “Incurred liabilities for the payment of compensation” means
9 the sum of an estimate of future compensation, as compensation
10 is defined by Section 3207, plus an estimate of the amount
11 necessary to provide for the administration of claims, including
12 legal costs.

13 (f) “Insolvent self-insurer” means a stand-alone self-insured
14 employer whose certificate of consent to self-insure has been
15 revoked by the director or whose security deposit has been used
16 by the director pursuant to Section 3701.5.

17 (g) “Insolvent SIG” means a SIG whose certificate of consent
18 to self-insure has been revoked by the director, which has failed
19 to pay compensation, or whose security deposit has been used by
20 the director pursuant to Section 3701.5.

21 (h) “Private self-insurer” and “private self-insured employer”
22 mean any employer that has been issued a certificate of consent
23 to self-insure by the director, whether as a stand-alone self-insured
24 employer or as a member of a SIG which has secured the payment
25 of compensation pursuant to subdivision (b) of Section 3700.

26 (i) “SIG” means a nonprofit mutual benefit corporation to which
27 a group of private self-insured employers have transferred primary
28 liability for their workers’ compensation obligations and has
29 secured the payment of compensation pursuant to subdivision (b)
30 of Section 3700.

31 (j) “SIG Fund” means the Self-Insured Group Security Fund
32 established pursuant to Section 3742.5.

33 (k) “SIG Fund Member” means a SIG which participates in the
34 SIG Fund.

35 (l) “SIG Fund Trustees” means the Board of Trustees of the
36 SIG Fund.

37 (m) “Stand-alone self-insured employer” and “stand-alone
38 self-insured” mean a private employer that retains primary liability
39 for its own worker’s compensation obligations, whether alone or

1 *in connection with guarantors, and has secured the payment of*
2 *compensation pursuant to subdivision (b) of Section 3700.*

3 *SEC. 2. Section 3701 of the Labor Code is amended to read:*

4 3701. (a) Each year every private self-insuring employer shall
5 secure incurred liabilities for the payment of compensation and
6 the performance of the obligations of employers imposed under
7 this chapter by renewing the prior year's security deposit or by
8 making a new deposit of security. If a new deposit is made, it shall
9 be posted within 60 days of the filing of the self-insured employer's
10 annual report with the director, but in no event later than May 1.

11 (b) The solvency risk and security deposit amount for each
12 ~~private and group self-insurer~~ *stand-alone self-insured employer*
13 shall be acceptable to the Self-Insurers' Security Fund.

14 (c) Unless otherwise permitted by regulation, the deposit shall
15 be an amount equal to the self-insurer's projected losses, net of
16 specific excess insurance coverage, if any, and inclusive of incurred
17 but not reported (IBNR) liabilities, allocated loss adjustment
18 expense, and unallocated loss adjustment expense, calculated as
19 of December 31 of each year. The calculation of projected losses
20 and expenses shall be reflected in a written actuarial report that
21 projects ultimate liabilities of the private self-insured employer at
22 the expected actuarial confidence level, to ensure that all claims
23 and associated costs are recognized. The written actuarial report
24 shall be prepared by an actuary meeting the qualifications
25 prescribed by the director in regulation.

26 (d) In determining the amount of the deposit required to secure
27 incurred liabilities for the payment of compensation and the
28 performance of obligations of a self-insured employer imposed
29 under this chapter, the director shall offset estimated future
30 liabilities for the same claims covered by a self-insured plan under
31 the federal Longshore and Harbor Workers' Compensation Act
32 (33 U.S.C. Sec. 901 et seq.), but in no event shall the offset exceed
33 the estimated future liabilities for the claims under this chapter.

34 (e) The director may only accept as security, and the employer
35 shall deposit as security, cash, securities, surety bonds, or
36 irrevocable letters of credit in any combination the director, in his
37 or her discretion, deems adequate security. The current deposit
38 shall include any amounts covered by terminated surety bonds or
39 excess insurance policies, as shall be set forth in regulations
40 adopted by the director pursuant to Section 3702.10.

(f) Surety bonds, irrevocable letters of credit, and documents showing issuance of any irrevocable letter of credit shall be deposited with, and be in a form approved by, the director, shall be exonerated only according to its terms and, in no event, by the posting of additional security.

(g) The director may accept as security a joint security deposit that secures an employer's obligation under this chapter and that also secures that employer's obligations under the federal Longshore and Harbor Workers' Compensation Act.

(h) The liability of the Self-Insurers' Security Fund *and the SIG Fund*, with respect to any claims brought under both this chapter and under the federal Longshore and Harbor Workers' Compensation Act, to pay for shortfalls in a security deposit shall be limited to the amount of claim liability owing the employee under this chapter offset by the amount of any claim liability owing under the federal Longshore and Harbor Workers' Compensation Act, but in no event shall the liability of the fund exceed the claim liability under this chapter. The employee shall be entitled to pursue recovery under either or both the state and federal programs.

(i) Securities shall be deposited on behalf of the director by the self-insured employer with the Treasurer. Securities shall be accepted by the Treasurer for deposit and shall be withdrawn only upon written order of the director.

(j) Cash shall be deposited in a financial institution approved by the director, and in the account assigned to the director. Cash shall be withdrawn only upon written order of the director.

(k) Upon the sending by the director of a request to renew, request to post, or request to increase or decrease a security deposit, a perfected security interest is created in the private self-insured's assets in favor of the director and, *in the case of a stand-alone self-insured employer* the Self-Insurers' Security Fund, *or in the case of a SIG the SIG Fund*, to the extent of any then unsecured portion of the self-insured's incurred liabilities. That perfected security interest is transferred to any cash or securities thereafter posted by the private self-insured with the director and is released only upon either of the following:

(1) The acceptance by the director of a surety bond or irrevocable letter of credit for the full amount of the incurred liabilities for the payment of compensation.

(2) The return of cash or securities by the director.

1 ~~The~~

2 (l) The private self-insured employer loses all right, title, and
3 interest in, and any right to control, all assets or obligations posted
4 or left on deposit as security. The director may liquidate the deposit
5 as provided in Section 3701.5 and apply it to the self-insured
6 employer's incurred liabilities either directly or through the
7 Self-Insurers' Security Fund *or through the SIG Fund*.

8 (m) *The solvency risk and security deposit amount for each SIG*
9 *shall be acceptable to the SIG Fund.*

10 SEC. 3. *Section 3701.3 of the Labor Code is amended to read:*

11 3701.3. The director shall return to a private self-insured
12 employer all individual security determined, with the consent of
13 the Self-Insurers' Security Fund (SISF) *in the case of a stand-alone*
14 *self-insured employer or the consent of the SIG Fund in the case*
15 *of a SIG*, to be in excess of that needed to ~~ensure~~ assure the
16 administration of the employer's self insuring, including legal fees,
17 and the payment of any future claims. This section shall not apply
18 to any security posted as part of the *SISF alternate* composite
19 deposit, *the SIG alternate composite deposit*, or to any security
20 turned over to the Self-Insurers' Security Fund *or the SIG Fund*
21 following an order of default under Section 3701.5.

22 SEC. 4. *Section 3701.5 of the Labor Code is amended to read:*

23 3701.5. (a) If the director determines that a private self-insured
24 employer has failed to pay workers' compensation as required by
25 this division, the security deposit shall be utilized to administer
26 and pay the employer's compensation obligations.

27 (b) If the director determines the security deposit has not been
28 immediately made available for the payment of compensation, the
29 director shall determine the method of payment and claims
30 administration as appropriate, which may include, but is not limited
31 to, payment by a surety that issued the bond, or payment by an
32 issuer of an irrevocable letter of credit, and administration by a
33 surety or by an adjusting agency, ~~or~~ through the Self-Insurers'
34 Security Fund, *or the SIG Fund*, or any combination thereof. If
35 the director arranges for administration and payment by any person
36 other than the Self-Insurers' Security Fund *or the SIG Fund* after
37 a default is declared, the fund *and the SIG Fund* shall have no
38 responsibility for claims administration or payment of the claims.

39 (c) (1) If the director determines the payment of benefits and
40 claims administration shall be made through *either* the

1 Self-Insurers' Security Fund *or the SIG Fund*, the fund shall
 2 commence payment of the private self-insured employer's
 3 obligations for which it is liable under Section 3743 within 30 days
 4 of notification. Payments shall be made to claimants whose
 5 entitlement to benefits can be ascertained by the fund *or the SIG*
 6 *Fund*, with or without proceedings before the appeals board. Upon
 7 the assumption of obligations by the fund *or the SIG Fund* pursuant
 8 to the director's determination, the fund *or the SIG Fund* shall
 9 have a right to immediate possession of any posted security and
 10 the custodian, surety, or issuer of any irrevocable letter of credit
 11 shall turn over the security to the fund *or the SIG Fund* together
 12 with the interest that has accrued since the date of the self-insured
 13 employer's default or insolvency.

14 (2) *The director shall promptly audit a self-insured employer*
 15 *upon making a determination under subdivision (a) or (b). The*
 16 *employer, any excess insurer, and any adjusting agency shall*
 17 *provide any relevant information in their possession. If the audit*
 18 *results in a preliminary estimate that liabilities exceed the amount*
 19 *of the security deposit, the director shall direct the custodian of*
 20 *the security deposit to liquidate it and provide all proceeds to the*
 21 *Self-Insurers' Security Fund in the case of a stand-alone*
 22 *self-insurer or the SIG Fund in the case of a SIG. If the preliminary*
 23 *estimate is that liabilities are less than the security deposit, the*
 24 *director shall ensure the administration and payment of*
 25 *compensation pursuant to subdivision (b).*

26 (d) The payment of benefits by the Self-Insurers' Security Fund
 27 *or the SIG Fund* from security deposit proceeds shall release and
 28 discharge any custodian of the security deposit, surety, any issuer
 29 of a letter of credit, and the self-insured employer, from liability
 30 to fulfill obligations to provide those same benefits as
 31 compensation, but does not release any person from any liability
 32 to the fund for full reimbursement. Payment by a surety constitutes
 33 a full release of the surety's liability under the bond to the extent
 34 of that payment, and entitles the surety to full reimbursement by
 35 the principal or his or her estate. Full reimbursement includes
 36 necessary attorney fees and other costs and expenses, without prior
 37 claim or proceedings on the part of the injured employee or other
 38 beneficiaries. Any decision or determination made, or any
 39 settlement approved, by the director or by the appeals board under
 40 subdivision (f) shall conclusively be presumed valid and binding

1 as to any and all known claims arising out of the underlying
2 dispute, unless an appeal is made within the time limit specified
3 in Section 5950.

4 (e) The director shall advise the Self-Insurers' Security Fund
5 *or the SIG Fund* promptly after receipt of information indicating
6 that a private self-insured employer may be unable to meet its
7 compensation obligations. The director shall also advise the
8 Self-Insurers' Security Fund *or the SIG Fund* of all determinations
9 and directives made or issued pursuant to this section. All financial,
10 actuarial, or claims information received by the director from any
11 self-insurer may be shared by the director with the Self-Insurers'
12 Security Fund *and the SIG Fund*.

13 (f) Disputes concerning the posting, renewal, termination,
14 exoneration, or return of all or any portion of the security deposit,
15 or any liability arising out of the posting or failure to post security,
16 or adequacy of the security or reasonableness of administrative
17 costs, including legal fees, and arising between or among a surety,
18 the issuer of an agreement of assumption and guarantee of workers'
19 compensation liabilities, the issuer of a letter of credit, any
20 custodian of the security deposit, a self-insured employer, ~~or~~ the
21 Self-Insurers' Security Fund, *or the SIG Fund* shall be resolved
22 by the director. An appeal from the director's decision or
23 determination may be taken to the appropriate superior court by
24 petition for writ of mandate. Payment of claims from the security
25 deposit or by the Self-Insurers' Security Fund shall not be stayed
26 pending the resolution of the disputes unless and until the superior
27 court issues a determination staying a payment of claims decision
28 or determination of the director.

29 *SEC. 5. Section 3701.7 of the Labor Code is amended to read:*

30 3701.7. Where any employer requesting coverage under a new
31 or existing certificate of consent to self-insure has had a period of
32 unlawful uninsurance, either for an applicant in its entirety or for
33 a subsidiary or member of a joint powers authority legally
34 responsible for its own workers' compensation obligations, the
35 following special conditions shall apply before the director may
36 determine if the requesting employer can operate under a certificate
37 of consent to self-insure:

38 (a) The director may require a deposit of not less than 200
39 percent of the outstanding liabilities remaining unpaid at the time

1 of application, which had been incurred during the uninsurance
2 period.

3 (b) At the discretion of the director, where a public or private
4 employer has been previously totally uninsured for workers'
5 compensation pursuant to Section 3700, the director may require
6 an additional deposit not to exceed 100 percent of the total
7 outstanding liabilities for the uninsured period, or the sum of two
8 hundred fifty thousand dollars (\$250,000), whichever is greater.

9 (c) In addition to the deposits required by subdivisions (a) and
10 (b), a penalty shall be paid to the Uninsured Employers Fund of
11 10 percent per year of the remaining unpaid liabilities, for every
12 year liabilities remain outstanding. In addition, an additional
13 application fee, not to exceed one thousand dollars (\$1,000), plus
14 assessments, pursuant to Section 3702.5 and subdivision (b) of
15 Section 3745, may be imposed by the director and the
16 Self-Insurers' Security Fund, respectively, against private
17 self-insured employers *Fund against a stand-alone self-insured*
18 *employer, or the director and the SIG Fund against a SIG.*

19 (d) A certificate of consent to self-insure shall not be granted
20 to an applicant that has had a period of unlawful uninsurance
21 without the written approval of the Self-Insurers' Security Fund
22 *in the case of a self-insured stand-alone employer or the SIG Fund*
23 *in the case of a SIG.*

24 (e) An employer may retrospectively insure the outstanding
25 liabilities arising out of the uninsured period, either before or after
26 an application for self-insurance has been approved. Upon proof
27 of insurance acceptable to the director, no deposit shall be required
28 for the period of uninsurance.

29 The penalties to be paid to the Uninsured Employers Fund shall
30 consist of a one-time payment of 20 percent of the outstanding
31 liabilities for the period of uninsurance remaining unpaid at the
32 time of application, in lieu of any other penalty for being
33 unlawfully uninsured pursuant to this code.

34 (f) In the case of a subsidiary which meets all of the following
35 conditions, a certificate shall issue without penalty:

36 (1) The subsidiary has never had a certificate revoked for reasons
37 set forth in Section 3702.

38 (2) Employee injuries were reported to the Office of
39 Self-Insurance Plans in annual reports.

1 (3) The security deposit of the certificate holder was calculated
2 to include the entity's compensation liabilities.

3 (4) Application for a separate certificate or corrected certificate
4 is made within 90 days and completed within 180 days of notice
5 from the Office of Self-Insurance Plans. If the requirements of this
6 subdivision are not met, all penalties pursuant to subdivision (b)
7 of Section 3702.9 shall apply.

8 (g) The director may approve an application on the date the
9 application is substantially completed, subject to completion
10 requirements, and may make the certificate effective on an earlier
11 date, covering a period of uninsurance, if the employer complies
12 with the requirements of this section.

13 (h) Any decision by the director may be contested by an entity
14 in the manner provided in Section 3701.5.

15 (i) Nothing in this section shall abrogate the right of an employee
16 to bring an action against an uninsured employer pursuant to
17 Section 3706.

18 (j) Nothing in this statute shall abrogate the right of a
19 self-insured employer to insure against known or unknown claims
20 arising out of the self-insurance period.

21 *SEC. 6. Section 3701.8 of the Labor Code is amended to read:*

22 3701.8. (a) As an alternative to each private self-insuring
23 employer securing its own incurred liabilities as provided in
24 Section 3701, the director may provide by regulation for an
25 alternative security system whereby all ~~private self-insureds~~
26 *stand-alone self-insured employers* designated for full participation
27 by the director shall collectively secure their aggregate incurred
28 liabilities through the Self-Insurers' Security Fund, *which shall be*
29 *known as the SISF Alternate Composite Deposit Program*. The
30 regulations shall provide for the director to set a total security
31 requirement for these participating *stand-alone* self-insured
32 employers *in the SISF Alternate Composite Deposit Program* based
33 on a review of their annual reports and any other self-insurer
34 information as may be specified by the director. The Self-Insurers'
35 Security Fund shall propose to the director a combination of cash
36 and securities, surety bonds, irrevocable letters of credit, insurance,
37 or other financial instruments or guarantees satisfactory to the
38 director sufficient to meet the security requirement set by the
39 director. Upon approval by the director and posting by the
40 Self-Insurers' Security Fund on or before the date set by the

1 director, that combination shall be the *SISF alternate* composite
2 deposit. The noncash elements of the ~~composite deposit~~ *SISF*
3 *Alternate Composite Deposit Program* may be one-year or
4 multiple-year instruments. If the Self-Insurers' Security Fund fails
5 to post the required composite deposit by the date set by the
6 director, then within 30 days after that date, each private
7 *stand-alone* self-insuring employer shall secure its incurred
8 liabilities in the manner required by Section 3701. Self-insured
9 employers not designated for full participation by the director shall
10 meet all requirements as may be set by the director pursuant to
11 subdivision (g).

12 (b) In order to provide for the *SISF alternate* composite deposit
13 approved by the director, the Self-Insurers' Security Fund shall
14 assess, in a manner approved by the director, each fully
15 participating private *stand-alone* self-insuring employer a deposit
16 assessment payable within 30 days of assessment. The amount of
17 the deposit assessment charged each fully participating *stand-alone*
18 self-insured employer shall be set by the Self-Insurers' Security
19 Fund, based on its reasonable consideration of all the following
20 factors:

21 (1) The total amount needed to provide the *SISF alternate*
22 composite deposit.

23 (2) The *stand-alone* self-insuring employer's paid or incurred
24 liabilities as reflected in its annual report.

25 (3) The financial strength and creditworthiness of the
26 *stand-alone* self-insured.

27 (4) Any other reasonable factors as may be authorized by
28 regulation.

29 (5) In order to make a *SISF alternate* composite deposit proposal
30 to the director and set the deposit assessment to be charged each
31 fully participating *stand-alone* self-insured, the Self-Insurers'
32 Security Fund shall have access to the annual reports and other
33 information submitted by all *stand-alone* self-insuring employers
34 to the director, under terms and conditions as may be set by the
35 director, to preserve the confidentiality of the *stand-alone*
36 self-insured's financial information.

37 (c) Upon payment of the deposit assessment and except as
38 provided herein, the *stand-alone* self-insuring employer loses all
39 right, title, and interest in the deposit assessment. To the extent
40 that in any one year the deposit assessment paid by *stand-alone*

1 self-insurers is not exhausted in the purchase of securities, surety
2 bonds, irrevocable letters of credit, insurance, or other financial
3 instruments to post with the director as part of the *SISF alternate*
4 composite deposit, the surplus shall remain posted with the director,
5 and the principal and interest earned on that surplus shall remain
6 as part of the *SISF alternate* composite deposit in subsequent years.
7 In the event that in any one year the Self-Insurers' Security Fund
8 fails to post the required *SISF alternate* composite deposit by the
9 date set the by the director, and the director requires each private
10 *SISF alternate* self-insuring employer to secure its incurred
11 liabilities in the manner required by Section 3701, then any deposit
12 assessment paid in that year shall be refunded to the *stand-alone*
13 self-insuring employer that paid the deposit assessment.

14 (d) If any private *stand-alone* self-insuring employer objects to
15 the calculation, posting, or any other aspect of its deposit
16 assessment, upon payment of the assessment in the time provided,
17 the employer shall have the right to appeal the assessment to the
18 director, who shall have exclusive jurisdiction over this dispute.
19 If any private *stand-alone* self-insuring employer fails to pay the
20 deposit assessment in the time provided, the director shall order
21 the *stand-alone* self-insuring employer to pay a penalty of not less
22 than 10 percent of its deposit assessment, plus interest on any
23 unpaid amount at the prejudgment rate, and to post a separate
24 security deposit in the manner provided by Section 3701. The
25 penalty and interest shall be paid directly to the Self-Insurers'
26 Security Fund. The director may also revoke the certificate of
27 consent to self-insure of any *stand-alone* self-insuring employer
28 who fails to pay the deposit assessment in the time provided.

29 (e) Upon the posting by the Self-Insurers' Security Fund of the
30 *SISF alternate* composite deposit with the director, the deposit
31 shall be held until the director determines that a private *stand-alone*
32 self-insured employer has failed to pay workers' compensation as
33 required by this division, and the director orders the Self-Insurers'
34 Security Fund to commence payment. Upon ordering the
35 Self-Insurers' Security Fund to commence payment, the director
36 shall make available to the fund that portion of the *SISF alternate*
37 composite deposit necessary to pay the workers' compensation
38 benefits of the defaulting *stand-alone* self-insuring employer. In
39 the event additional funds are needed in subsequent years to pay
40 the workers' compensation benefits of any self-insuring employer

who defaulted in earlier years, the director shall make available to the Self-Insurers' Security Fund any portions of the *SISF alternate* composite deposit as may be needed to pay those benefits. In making the deposit available to the Self-Insurers' Security Fund, the director shall also allow any amounts as may be reasonably necessary to pay for the administrative and other activities of the fund.

(f) The cash portion of the *SISF alternate* composite deposit shall be segregated from all other funds held by the director, and shall be invested by the director for the sole benefit of the Self-Insurers' Security Fund and the injured workers of private self-insured employers, and may not be used for any other purpose by the state. Alternatively, the director, in his discretion, may allow the Self-Insurers' Security Fund to hold, invest, and draw upon the cash portion of the *SISF alternate* composite deposit as prescribed by regulation.

(g) Notwithstanding any other provision of this section, the director shall, by regulation, set minimum credit, financial, or other conditions that a ~~private stand-alone~~ self-insured must meet in order to be a fully participating *stand-alone* self-insurer in the ~~alternative security system~~ *SISF Alternate Composite Deposit Program*. In the event any ~~private stand-alone~~ self-insuring employer is unable to meet the conditions set by the director, or upon application of the Self-Insurers' Security Fund to exclude an employer for credit or financial reasons, the director shall exclude the *stand-alone* self-insuring employer from full participation in the ~~alternative security system~~ *SISF Alternate Composite Deposit Program*. In the event a *stand-alone* self-insuring employer is excluded from full participation, the nonfully participating ~~private stand-alone~~ self-insuring employer shall post a separate security deposit in the manner provided by Section 3701 and pay a deposit assessment set by the director. Alternatively, the director may order that the nonfully participating ~~private stand-alone~~ self-insuring employer post a separate security deposit to secure a portion of its incurred liabilities and pay a deposit assessment set by the director.

(h) ~~An employer who self-insures through group self-insurance and an employer whose certificate to self-insure has been revoked~~ may fully participate in the alternative security system if both the director and the Self-Insurers' Security Fund approve the

1 participation of the self-insurer. If not approved for full
2 participation, or if an employer is issued a certificate to self-insure
3 after the composite deposit is posted, the employer shall satisfy
4 the requirements of subdivision (g) for nonfully participating
5 private self-insurers.

6 (i) At all times, a self-insured employer shall have secured its
7 incurred workers' compensation liabilities either in the manner
8 required by Section 3701 or through the ~~alternative security system~~
9 *SISF Alternate Composite Deposit Program or the SIG Alternate*
10 *Composite Deposit Program*, and there shall not be any lapse in
11 the security.

12 *SEC. 7. Section 3701.85 is added to the Labor Code, to read:*

13 *3701.85. (a) As an alternative to each private SIG securing*
14 *its own incurred liabilities as provided in Section 3701, the director*
15 *may provide by regulation for an alternative security system*
16 *whereby all private SIGs designated for full participation by the*
17 *director shall collectively secure their aggregate incurred liabilities*
18 *through the Self-Insured Group Security Fund, which shall be*
19 *known as the "SIG Alternate Composite Deposit Program." The*
20 *regulations shall provide for the director to set a total security*
21 *requirement for these participating SIGs in the SIG Alternate*
22 *Composite Deposit Program based on a review of their annual*
23 *reports and any other self-insurer information as may be specified*
24 *by the director. The Self-Insured Group Security Fund shall*
25 *propose to the director a combination of cash and securities, surety*
26 *bonds, irrevocable letters of credit, insurance, or other financial*
27 *instruments or guarantees satisfactory to the director sufficient to*
28 *meet the security requirement set by the director. Upon approval*
29 *by the director and posting by the Self-Insured Group Security*
30 *Fund on or before the date set by the director, that combination*
31 *shall be the SIG Alternate Composite Deposit. The noncash*
32 *elements of the SIG Alternate Composite Deposit Program may*
33 *be one-year or multiple-year instruments. If the Self-Insured Group*
34 *Security Fund fails to post the required composite deposit by the*
35 *date set by the director, then within 30 days after that date, each*
36 *private SIG shall secure its incurred liabilities in the manner*
37 *required by Section 3701. Self-insured SIGs not designated for*
38 *full participation by the director shall meet all requirements as*
39 *may be set by the director pursuant to subdivision (g).*

1 ***(b) In order to provide for the SIG alternate composite deposit***
2 ***approved by the director, the Self-Insured Group Security Fund***
3 ***shall assess, in a manner approved by the director, each fully***
4 ***participating private SIG a deposit assessment payable within 30***
5 ***days of assessment. The amount of the deposit assessment charged***
6 ***each fully participating SIG shall be set by the Self-Insured Group***
7 ***Security Fund based on its reasonable consideration of all the***
8 ***following factors:***

9 ***(1) The total amount needed to provide the SIG alternate***
10 ***composite deposit.***

11 ***(2) The SIG's paid or incurred liabilities as reflected in its***
12 ***annual report.***

13 ***(3) The financial strength and creditworthiness of the SIG.***

14 ***(4) Any other reasonable factors as may be authorized by***
15 ***regulation.***

16 ***(5) In order to make a SIG alternate composite deposit proposal***
17 ***to the director and set the deposit assessment to be charged each***
18 ***fully participating SIG, the Self-Insured Group Security Fund shall***
19 ***have access to the annual reports and other information submitted***
20 ***by all SIGs to the director, under terms and conditions as may be***
21 ***set by the director, to preserve the confidentiality of the SIG's***
22 ***financial information.***

23 ***(c) Upon payment of the deposit assessment and except as***
24 ***provided herein, the SIG loses all right, title, and interest in the***
25 ***deposit assessment. To the extent that in any one year the deposit***
26 ***assessment paid by SIGs is not exhausted in the purchase of***
27 ***securities, surety bonds, irrevocable letters of credit, insurance,***
28 ***or other financial instruments to post with the director as part of***
29 ***the SIG alternate composite deposit, the surplus shall remain***
30 ***posted with the director, and the principal and interest earned on***
31 ***that surplus shall remain as part of the SIG alternate composite***
32 ***deposit in subsequent years. In the event that in any one year the***
33 ***Self-Insured Group Security Fund fails to post the required SIG***
34 ***alternate composite deposit by the date set the by the director, and***
35 ***the director requires each private SIG to secure its incurred***
36 ***liabilities in the manner required by Section 3701, then any deposit***
37 ***assessment paid in that year shall be refunded to the SIG that paid***
38 ***the deposit assessment.***

39 ***(d) If any private SIG objects to the calculation, posting, or any***
40 ***other aspect of its deposit assessment, upon payment of the***

1 assessment in the time provided, the employer shall have the right
2 to appeal the assessment to the director, who shall have exclusive
3 jurisdiction over this dispute. If any private SIG fails to pay the
4 deposit assessment in the time provided, the director shall order
5 the SIG to pay a penalty of not less than 10 percent of its deposit
6 assessment, plus interest on any unpaid amount at the prejudgment
7 rate, and to post a separate security deposit in the manner provided
8 by Section 3701. The penalty and interest shall be paid directly to
9 the Self-Insured Group Security Fund. The director may also
10 revoke the certificate of consent to self-insure of any SIG who fails
11 to pay the deposit assessment in the time provided.

12 (e) Upon the posting by the Self-Insured Group Security Fund
13 of the SIG alternate composite deposit with the director, the deposit
14 shall be held until the director determines that a private SIG has
15 failed to pay workers' compensation as required by this division,
16 and the director orders the Self-Insured Group Security Fund to
17 commence payment. Upon ordering the Self-Insured Group
18 Security Fund to commence payment, the director shall make
19 available to the fund that portion of the SIG alternate composite
20 deposit necessary to pay the workers' compensation benefits of
21 the defaulting SIG. In the event additional funds are needed in
22 subsequent years to pay the workers' compensation benefits of
23 any self-insuring employer who defaulted in earlier years, the
24 director shall make available to the Self-Insured Group Security
25 Fund any portions of the SIG alternate composite deposit as may
26 be needed to pay those benefits. In making the deposit available
27 to the Self-Insured Group Security Fund, the director shall also
28 allow any amounts as may be reasonably necessary to pay for the
29 administrative and other activities of the fund.

30 (f) The cash portion of the SIG alternate composite deposit shall
31 be segregated from all other funds held by the director, and shall
32 be invested by the director for the sole benefit of the Self-Insured
33 Group Security Fund and the injured workers of self-insured
34 employers, and may not be used for any other purpose by the state.
35 Alternatively, the director, in his discretion, may allow the
36 Self-Insured Group Security Fund to hold, invest, and draw upon
37 the cash portion of the SIG alternate composite deposit as
38 prescribed by regulation.

39 (g) Notwithstanding any other provision of this section, the
40 director shall, by regulation, set minimum credit, financial, or

1 *other conditions that a private SIG must meet in order to be a fully*
2 *participating SIG in the SIG Alternate Composite Deposit*
3 *Program. In the event any private SIG is unable to meet the*
4 *conditions set by the director, or upon application of the*
5 *Self-Insured Group Security Fund to exclude an employer for*
6 *credit or financial reasons, the director shall exclude the SIG from*
7 *full participation in the SIG Alternate Composite Deposit Program.*
8 *In the event a SIG is excluded from full participation, the nonfully*
9 *participating private SIG shall post a separate security deposit in*
10 *the manner provided by Section 3701 and pay a deposit assessment*
11 *set by the director. Alternatively, the director may order that the*
12 *nonfully participating private SIG post a separate security deposit*
13 *to secure a portion of its incurred liabilities and pay a deposit*
14 *assessment set by the director.*

15 *(h) An employer whose certificate to self-insure has been*
16 *revoked may fully participate in the alternative security system if*
17 *both the director and the Self-Insured Group Security Fund*
18 *approve the participation of the self-insurer. If not approved for*
19 *full participation, or if an employer is issued a certificate to*
20 *self-insure after the composite deposit is posted, the employer shall*
21 *satisfy the requirements of subdivision (g) for nonfully participating*
22 *private self-insurers.*

23 *(i) At all times, a self-insured employer shall have secured its*
24 *incurred workers' compensation liabilities either in the manner*
25 *required by Section 3701, through the SISF Alternate Composite*
26 *Deposit Program or through the SIG Alternate Composite Deposit*
27 *Program, and there shall not be any lapse in the security.*

28 *SEC. 8. Section 3702 of the Labor Code is amended to read:*

29 *3702. (a) A certificate of consent to self-insure may be revoked*
30 *by the director at any time for good cause after a hearing. Good*
31 *cause includes, among other things, a recommendation by the*
32 *Self-Insurers' Security Fund to revoke the certificate of consent,*
33 *a recommendation by the SIG Fund to revoke the certificate of*
34 *consent, the impairment of the solvency of the employer to the*
35 *extent that there is a marked reduction of the employer's financial*
36 *strength, failure to maintain a security deposit as required by*
37 *Section 3701, failure to pay assessments of the Self-Insurers'*
38 *Security Fund or the SIG Fund, frequent or flagrant violations of*
39 *state safety and health orders, the failure or inability of the*
40 *employer to fulfill his or her obligations, or any of the following*

1 practices by the employer or his or her agent in charge of the
2 administration of obligations under this division:

3 (1) Habitually and as a matter of practice and custom inducing
4 claimants for compensation to accept less than the compensation
5 due or making it necessary for them to resort to proceedings against
6 the employer to secure compensation due.

7 (2) Where liability for temporary disability indemnity is not in
8 dispute, intentionally failing to pay temporary disability indemnity
9 without good cause in order to influence the amount of permanent
10 disability benefits due.

11 (3) Intentionally refusing to comply with known and legally
12 indisputable compensation obligations.

13 (4) Discharging or administering his or her compensation
14 obligations in a dishonest manner.

15 (5) Discharging or administering his or her compensation
16 obligations in such a manner as to cause injury to the public or
17 those dealing with the employer.

18 (b) Where revocation is in part based upon the director's finding
19 of a marked reduction of the employer's financial strength or the
20 failure or inability of the employer to fulfill his or her obligations,
21 or a practice of discharging obligations in a dishonest manner, it
22 is a condition precedent to the employer's challenge or appeal of
23 the revocation that the employer have in effect insurance against
24 liability to pay compensation.

25 (c) The director may hold a hearing to determine whether good
26 cause exists to revoke an employer's certificate of consent to
27 self-insure if the employer is cited for a willful, or repeat serious
28 violation of the standard adopted pursuant to Section 6401.7 and
29 the citation has become final.

30 *SEC. 9. Section 3702.5 of the Labor Code is amended to read:*

31 3702.5. (a) (1) The cost of administration of the public
32 self-insured program by the Director of Industrial Relations shall
33 be borne by the Workers' Compensation Administration Revolving
34 Fund.

35 (2) The cost of administration of the private self-insured program
36 by the Director of Industrial Relations shall be borne by the private
37 self-insurers through payment of certificate fees which shall be
38 established by the director in broad ranges based on the
39 comparative numbers of employees insured by the private
40 self-insurers and the number of adjusting locations. The director

1 may assess other fees as necessary to cover the costs of special
2 audits or services rendered to private self-insured employers. The
3 director may assess a civil penalty for late filing as set forth in
4 subdivision (a) of Section 3702.9.

5 (b) All revenues from fees and penalties paid by private
6 self-insured employers shall be deposited into the Self-Insurance
7 Plans Fund, which is hereby created for the administration of the
8 private self-insurance program. Any unencumbered balance in
9 subdivision (a) of Item 8350-001-001 of the Budget Act of 1983
10 shall be transferred to the Self-Insurance Plans Fund. The director
11 shall annually eliminate any unused surplus in the Self-Insurance
12 Plans Fund by reducing certificate fee assessments by an
13 appropriate amount in the subsequent year. Moneys paid into the
14 Self-Insurance Plans Fund for administration of the private
15 self-insured program shall not be used by any other department or
16 agency or for any purpose other than administration of the private
17 self-insurance program. Detailed accountability shall be maintained
18 by the director for any security deposit or other funds held in trust
19 for the Self-Insurer's Security Fund *and the SIG Fund* in the
20 Self-Insurance Plans Fund.

21 ~~Moneys~~

22 (c) *Moneys* held by the director shall be invested in the Surplus
23 Money Investment Fund. Interest shall be paid on all moneys
24 transferred to the General Fund in accordance with Section 16310
25 of the Government Code. The Treasurer's and Controller's
26 administrative costs may be charged to the interest earnings upon
27 approval of the director.

28 *SEC. 10. Section 3702.8 of the Labor Code is amended to read:*

29 3702.8. (a) Employers who have ceased to be self-insured
30 employers shall discharge their continuing obligations to secure
31 the payment of workers' compensation that accrued during the
32 period of self-insurance, for purposes of Sections 3700, 3700.5,
33 3706, and 3715, and shall comply with all of the following
34 obligations of current certificate holders:

35 (1) Filing annual reports as deemed necessary by the director
36 to carry out the requirements of this chapter.

37 (2) In the case of a private employer, depositing and maintaining
38 a security deposit for accrued liability for the payment of any
39 workers' compensation that may become due, pursuant to

1 subdivision (b) of Section 3700 and Section 3701, except as
2 provided in subdivision (c).

3 (3) Paying within 30 days all assessments of which notice is
4 sent, pursuant to subdivision (b) of Section 3745, within 36 months
5 from the last day the employer's certificate of self-insurance was
6 in effect. Assessments shall be based on the benefits paid by the
7 employer during the last full calendar year of self-insurance on
8 claims incurred during that year.

9 (b) In addition to proceedings to establish liabilities and penalties
10 otherwise provided, a failure to comply may be the subject of a
11 proceeding before the director. An appeal from the director's
12 determination shall be taken to the appropriate superior court by
13 petition for writ of mandate.

14 (c) Notwithstanding subdivision (a), any employer who is
15 currently self-insured or who has ceased to be self-insured may
16 purchase a special excess workers' compensation policy to
17 discharge any or all of the employer's continuing obligations as a
18 self-insurer to pay compensation or to secure the payment of
19 compensation.

20 (1) The special excess workers' compensation insurance policy
21 shall be issued by an insurer authorized to transact workers'
22 compensation insurance in this state.

23 (2) Each carrier's special excess workers' compensation policy
24 shall be approved as to form and substance by the Insurance
25 Commissioner, and rates for special excess workers' compensation
26 insurance shall be subject to the filing requirements set forth in
27 Section 11735 of the Insurance Code.

28 (3) Each special excess workers' compensation insurance policy
29 shall be submitted by the employer to the director. The director
30 shall adopt and publish minimum insurer financial rating standards
31 for companies issuing special excess workers' compensation
32 policies.

33 (4) Upon acceptance by the director, a special excess workers'
34 compensation policy shall provide coverage for all or any portion
35 of the purchasing employer's claims for compensation arising out
36 of injuries occurring during the period the employer was
37 self-insured in accordance with Sections 3755, 3756, and 3757 of
38 the Labor Code and Sections 11651 and 11654 of the Insurance
39 Code. The director's acceptance shall discharge the Self-Insurer's
40 Security Fund *in the case of a stand-alone self-insurer, or the SIG*

1 *Fund in the case of a SIG*, without recourse or liability to the
2 Self-Insurer's Security Fund *or the SIG Fund*, of any continuing
3 liability for the claims covered by the special excess workers'
4 compensation insurance policy.

5 (5) For public employers, no security deposit or financial
6 guarantee bond or other security shall be required. The director
7 shall set minimum financial rating standards for insurers issuing
8 special excess workers' compensation policies for public
9 employers.

10 (d) (1) In order for the special excess workers' compensation
11 insurance policy to discharge the full obligations of a private
12 employer to maintain a security deposit with the director for the
13 payment of self-insured claims, applicable to the period to be
14 covered by the policy, the special excess policy shall provide
15 coverage for all claims for compensation arising out of that
16 liability. The employer shall maintain the required deposit for the
17 period covered by the policy with the director for a period of three
18 years after the issuance date of the special excess policy.

19 (2) If the special workers' compensation insurance policy does
20 not provide coverage for all of the continuing obligations for which
21 the private self-insured employer is liable, to the extent the
22 employer's obligations are not covered by the policy a private
23 employer shall maintain the required deposit with the director. In
24 addition, the employer shall maintain with the director the required
25 deposit for the period covered by the policy for a period of three
26 years after the issuance date of the special excess policy.

27 (e) The director shall adopt regulations pursuant to Section
28 3702.10 that are reasonably necessary to implement this section
29 in order to reasonably protect injured workers, employers, the
30 Self-Insurers' Security Fund, *the SIG Fund*, and the California
31 Insurance Guarantee Association.

32 (f) The posting of a special excess workers' compensation
33 insurance policy with the director shall discharge the obligation
34 of the Self-Insurer's Security Fund pursuant to Section 3744 to
35 pay claims in the event of an insolvency of a private employer to
36 the extent of coverage of compensation liabilities under the special
37 excess workers' compensation insurance policy. The California
38 Insurance Guarantee Association ~~and~~, the Self-Insurers' Security
39 Fund, *or the SIG Fund*, *as appropriate*, shall be advised by the

1 director whenever a special excess workers' compensation
2 insurance policy is posted.

3 *SEC. 11. Section 3702.10 of the Labor Code is amended to*
4 *read:*

5 3702.10. The director, in accordance with Chapter 3.5
6 (commencing with Section 11340) of Part 1 of Division 3 of Title
7 2 of the Government Code, may adopt, amend, and repeal rules
8 and regulations reasonably necessary to carry out the purposes of
9 Section 129 and Article 1 (commencing with Section 3700), Article
10 2 (commencing with Section 3710), and Article 2.5 (commencing
11 with Section 3740). This authorization includes, but is not limited
12 to, the adoption of regulations to do all of the following:

13 (a) Specifying what constitutes ability to self-insure and to pay
14 any compensation which may become due under Section 3700.

15 (b) Specifying what constitutes a marked reduction of an
16 employer's financial strength.

17 (c) Specifying what constitutes a failure or inability to fulfill
18 the employer's obligations under Section 3702.

19 (d) Interpreting and defining the terms used.

20 (e) Establishing procedures and standards for hearing and
21 determinations, and providing for those determinations to be
22 appealed to the appeals board.

23 (f) Specifying the standards, form, and content of agreements,
24 forms, and reports between parties who have obligations pursuant
25 to this chapter.

26 (g) Providing for the combinations and relative liabilities of
27 security deposits, assumptions, and guarantees used pursuant to
28 this chapter.

29 (h) Disclosing otherwise confidential financial information
30 concerning self-insureds to ~~courts or the court~~, the Self-Insurers'
31 Security Fund, *or the SIG Fund*, and specifying appropriate
32 safeguards for that information.

33 (i) Requiring an amount to be added to each security deposit to
34 secure the cost of administration of claims and to pay all legal
35 costs.

36 (j) Regulating the workers' compensation self-insurance
37 obligations of self-insurance groups and professional employer
38 organizations, leasing employers as defined in Section 606.5 of
39 the Unemployment Insurance Code, or temporary services

1 employers, as defined in Section 606.5 of the Unemployment
2 Insurance Code, holding certificates of consent to self-insure.

3 *SEC. 12. Section 3740 of the Labor Code is amended and*
4 *renumbered to read:*

5 ~~3740.~~

6 3740.5. It is the intent of the Legislature in enacting this article
7 and Article 1 (commencing with Section 3700) to provide for the
8 continuation of workers' compensation benefits delayed due to
9 the failure of a private *stand-alone* self-insured employer *or a SIG*
10 to meet its compensation obligations when the employers' security
11 deposit is either inadequate or not immediately accessible for the
12 payment of benefits. With respect to the continued liability of a
13 surety for claims that arose under a bond after termination of that
14 bond and to a surety's liability for the cost of administration of
15 claims, it is the intent of the Legislature to clarify existing law.
16 The Legislature finds and declares that the establishment of *two*
17 *security funds*, the Self-Insurers' Security Fund *for stand-alone*
18 *self-insured employers and the Self-Insured Group Security Fund*
19 *for groups of self-insured employers* is a necessary component of
20 a complete system of workers' compensation, required by Section
21 4 of Article XIV of the California Constitution, to have adequate
22 provisions for the comfort, health and safety, and general welfare
23 of any and all workers and their dependents to the extent of
24 relieving the consequences of any industrial injury or death, and
25 full provision for securing the payment of compensation.

26 *SEC. 13. Section 3740 is added to the Labor Code, to read:*

27 3740. The Legislature finds and declares as follows:

28 (a) A *Self-Insured Group* is a nonprofit mutual benefit
29 corporation whose members have transferred their primary
30 workers' compensation liabilities to the SIG.

31 (b) *Group self-insurance* is different from *stand-alone*
32 *self-insurance* because group self-insurance involves the transfer
33 of the primary risk of an occurrence from one entity to another.

34 (c) *Members of SIG* are jointly and severally liable for the
35 amounts required to pay the workers' compensation liabilities of
36 all the members of the group, and they may be assessed to cover
37 any shortfall in the group even if their own experience is loss free,
38 a scenario sometimes called "last man standing."

39 (d) *SIGs* have the potential to serve the interests of California
40 employers and employees by promptly providing workers'

1 *compensation benefits to injured workers at reasonable cost while*
2 *enabling and encouraging employers to improve safety and provide*
3 *the earliest appropriate return to work for injured employees.*

4 *(e) Smaller employers may generally receive the benefits of*
5 *self-insurance only through membership in a SIG because SIG*
6 *members do not have to prove their capacity to individually pay*
7 *their liabilities.*

8 *(f) SIGs have become an integral part of California's workers'*
9 *compensation system, providing coverage for more than 4,500*
10 *employers, 350,000 employees, and \$4.8 billion in payroll.*

11 *(g) The expansion and increased availability of group*
12 *self-insurance will further stabilize and facilitate the funding of*
13 *workers' compensation benefits.*

14 *(h) SIGs involve a lower risk of default than individual*
15 *self-insurance because there is recourse to the members of the SIG*
16 *for the recovery of assessments to pay unfunded workers'*
17 *compensation liabilities.*

18 *(i) A separate security fund will allow different risk pools for*
19 *SIGs and stand-alone self-insured employers.*

20 *(j) Providing a separate security fund for SIGs will facilitate*
21 *the development of distinct techniques for assessing and responding*
22 *to the risks that SIGs bring to their security fund.*

23 *(k) The pooling of risk among SIGs in a separate security fund*
24 *will have the salutary effect of promoting higher standards for*
25 *SIGs because each SIG will have a stronger interest in assuring*
26 *the financial integrity of all SIGs.*

27 *SEC. 14. Section 3741 of the Labor Code is amended to read:*
28 *3741. As used in this article:*

29 *(a) "Director" means the Director of Industrial Relations.*

30 *(b) "Fund" means the Self-Insurers' Security Fund established*
31 *pursuant to Section 3742.*

32 *(c) "Fund member" means a stand-alone self-insured employer*
33 *which participates in the Self-Insurers' Security Fund.*

34 *(d) "Fund trustees" means the Board of Trustees of the*
35 *Self-Insurers' Security Fund.*

36 *(e) "Insolvent SIG" means a SIG whose certificate of consent*
37 *to self-insure has been revoked by the director, or who has failed*
38 *to pay compensation, or whose security deposit has been called*
39 *by the director pursuant to Section 3701.5.*

1 ~~(b) “Private self-insurer” means a private employer which has~~
2 ~~secured the payment of compensation pursuant to subdivision (b)~~
3 ~~of Section 3700.~~

4 ~~(e)~~

5 (f) “Insolvent self-insurer” means a ~~private~~ *stand-alone*
6 ~~self-insurer whose certificate of consent to self-insure has been~~
7 ~~revoked by the director, or who has failed to pay compensation~~
8 ~~and, or whose security deposit has been called by the director~~
9 ~~pursuant to Section 3701.5.~~

10 ~~(d) “Fund” means the Self-Insurers’ Security Fund established~~
11 ~~pursuant to Section 3742.~~

12 ~~(e) “Trustees” means the Board of Trustees of the Self-Insurers’~~
13 ~~Security Fund.~~

14 ~~(f) “Member” means a private self-insurer which participates~~
15 ~~in the Self-Insurers’ Security Fund.~~

16 (g) “*Private self-insurer*” and “*private self-insured employer*”
17 ~~mean any employer that has been issued a certificate of consent~~
18 ~~to self-insure by the director, whether as a stand-alone self-insured~~
19 ~~employer or as a member of a SIG and has secured the payment~~
20 ~~of compensation pursuant to subdivision (b) of Section 3700.~~

21 (h) “SIG” means a nonprofit mutual benefit corporation to
22 ~~which a group of private self-insured employers have transferred~~
23 ~~primary liability for their workers’ compensation obligations and~~
24 ~~have secured the payment of compensation pursuant to subdivision~~
25 ~~(b) of Section 3700.~~

26 (i) “SIG Fund” means the Self-Insured Group Security Fund
27 ~~established pursuant to Section 3742.5.~~

28 (j) “SIG Fund member” means a SIG which participates in the
29 ~~SIG Fund.~~

30 (k) “SIG Fund trustees” means the Board of Trustees of the
31 ~~SIG Fund.~~

32 (l) “*Stand-alone self-insured employer*” and “*stand-alone*
33 ~~self-insured” mean a private employer that retains primary liability~~
34 ~~for its own worker’s compensation obligations, whether alone or~~
35 ~~in connection with guarantors, and has secured the payment of~~
36 ~~compensation pursuant to subdivision (b) of Section 3700.~~

37 SEC. 15. Section 3742 of the Labor Code is amended to read:

38 3742. (a) The Self-Insurers’ Security Fund shall be established
39 as a Nonprofit Mutual Benefit Corporation pursuant to Part 3
40 (commencing with Section 7110) of Division 2 of Title 1 of the

1 Corporations Code and this article. If any provision of the
2 Nonprofit Mutual Benefit Corporation Law conflicts with any
3 provision of this article, the provisions of this article shall apply.
4 Each ~~private self-insurer~~ *stand-alone self-insured employer* shall
5 participate as a member in the fund, unless its liabilities have been
6 turned over to the fund pursuant to Section 3701.5, at which time
7 its membership in the fund is relinquished.

8 (b) The fund shall be governed by a board of trustees with no
9 more than eight members, as established by the bylaws of the
10 Self-Insurers' Security Fund. The director shall hold ex officio
11 status, with full powers equal to those of a trustee, except that the
12 director shall not have a vote. The director, or a delegate authorized
13 in writing to act as the director's representative on the board of
14 trustees, shall carry out exclusively the responsibilities set forth
15 in Division 1 (commencing with Section 50) through Division 4
16 (commencing with Section 3200) and shall not have the obligations
17 of a trustee under the Nonprofit Mutual Benefit Corporation Law.
18 The fund shall adopt bylaws to segregate the director from all
19 matters that may involve fund litigation against the department or
20 fund participation in legal proceedings before the director.
21 Although not voting, the director or a delegate authorized in writing
22 to represent the director, shall be counted toward a quorum of
23 trustees. The remaining trustees shall be representatives of private
24 self-insurers. The self-insurer trustees shall be elected by the
25 members of the fund, each member having one vote. Trustees shall
26 be elected to four-year terms, and shall serve until their successors
27 are elected and assume office pursuant to the bylaws of the fund.

28 (c) The fund shall establish bylaws as are necessary to effectuate
29 the purposes of this article and to carry out the responsibilities of
30 the fund, including, but not limited to, any obligations imposed
31 by the director pursuant to Section 3701.8. The fund may carry
32 out its responsibilities directly or by contract, and may purchase
33 services and insurance and borrow funds as it deems necessary for
34 the protection of the members and their employees. The fund may
35 receive confidential information concerning the financial condition
36 of self-insured employers whose liabilities to pay compensation
37 may devolve upon it and shall adopt bylaws to prevent
38 dissemination of that information.

39 (d) The director may also require fund members to subscribe
40 to financial instruments or guarantees to be posted with the director

1 in order to satisfy the security requirements set by the director
2 pursuant to Section 3701.8.

3 *SEC. 16. Section 3742.5 is added to the Labor Code, to read:*

4 *3742.5. (a) The Self-Insured Group Security Fund shall be*
5 *established as a Nonprofit Mutual Benefit Corporation pursuant*
6 *to Part 3 (commencing with Section 7110) of Division 2 of Title 1*
7 *of the Corporations Code and this article. If any provision of the*
8 *Nonprofit Mutual Benefit Corporation Law conflicts with any*
9 *provision of this article, the provisions of this article shall apply.*
10 *Each SIG shall participate as a member in the SIG Fund as a*
11 *condition of maintaining its certificate of consent to self-insure.*

12 *(b) The SIG Fund shall be governed by a seven-member board*
13 *of trustees and shall include the director ex officio, with full powers*
14 *equal to those of a trustee, except that the director shall not have*
15 *a vote. The director, or a delegate authorized in writing to act as*
16 *the director's representative on the board of trustees, shall carry*
17 *out exclusively the responsibilities set forth in Division 1*
18 *(commencing with Section 50) through Division 4 (commencing*
19 *with Section 3200), inclusive, and shall not have the obligations*
20 *of a trustee under the Nonprofit Mutual Benefit Corporation Law.*
21 *The SIG Fund shall adopt bylaws to segregate the director from*
22 *all matters that may involve SIG Fund litigation against the*
23 *department or SIG Fund participation in legal proceedings before*
24 *the director. Although not voting, the director or a delegate*
25 *authorized in writing to represent the director, shall be counted*
26 *toward a quorum of trustees. Three of the remaining six trustees*
27 *shall be representatives selected from individual SIG boards of*
28 *trustees and three shall be representatives of SIG administrators.*
29 *The six trustees shall be elected by the SIG Fund members, each*
30 *SIG Fund member having one vote. The three SIG Fund trustees*
31 *selected from the SIG boards and initially elected by the members*
32 *shall serve two-year terms, and the three SIG administrator SIG*
33 *Fund trustees shall serve four-year terms. Thereafter, SIG Fund*
34 *trustees selected from SIG boards shall be elected to two-year*
35 *terms, and the SIG fund trustees selected from the SIG*
36 *administrators shall be elected to four-year terms and shall serve*
37 *until their successors are elected and assume office pursuant to*
38 *the bylaws of the SIG Fund.*

39 *(c) The SIG Fund shall establish bylaws as are necessary to*
40 *effectuate the purposes of this article and to carry out the*

1 responsibilities of the SIG Fund, including, but not limited to, any
2 obligations imposed by the director pursuant to Section 3701.8.
3 The SIG Fund may carry out its responsibilities directly or by
4 contract, and may purchase services and insurance and borrow
5 funds as it deems necessary for the protection of the SIG Fund
6 members and their employees. The SIG Fund may receive
7 confidential information concerning the financial condition of
8 self-insured employers whose liabilities to pay compensation may
9 devolve upon it and shall adopt bylaws to prevent dissemination
10 of that information.

11 (d) The director may also require SIG Fund members to
12 subscribe to financial instruments or guarantees to be posted with
13 the director in order to satisfy the security requirements set by the
14 director pursuant to Section 3701.8.

15 SEC. 17. Section 3743 of the Labor Code is amended to read:

16 3743. (a) Upon order of the director pursuant to Section
17 3701.5, the fund shall assume the workers' compensation
18 obligations of an insolvent self-insurer.

19 (b) Notwithstanding subdivision (a), the fund shall not be liable
20 for the payment of any penalties assessed for any act or omission
21 on the part of any person other than the fund, including, but not
22 limited to, the penalties provided in Section 132a, 3706, 4553,
23 4554, 4556, 4557, 4558, 4601.5, 5814, or 5814.1.

24 (c) The fund shall be a party in interest in all proceedings
25 involving compensation claims against an insolvent self-insurer
26 whose compensation obligations have been paid or assumed by
27 the fund. The fund shall have the same rights and defenses as the
28 insolvent self-insurer, including, but not limited to, all of the
29 following:

30 (1) To appear, defend, and appeal claims.

31 (2) To receive notice of, investigate, adjust, compromise, settle,
32 and pay claims.

33 (3) To investigate, handle, and deny claims.

34 (d) This section shall remain in effect only until July 1, 2014,
35 and as of that date is repealed, unless a later enacted statute, that
36 is enacted before July 1, 2014, deletes or extends that date.

37 SEC. 18. Section 3743 is added to the Labor Code, to read:

38 3743. (a) Upon order of the director pursuant to Section
39 3701.5, the fund shall assume the workers' compensation
40 obligations of an insolvent stand-alone self-insurer.

1 ***(b) Upon order of the director pursuant to Section 3701.5, the***
2 ***SIG Fund shall assume the workers' compensation obligations of***
3 ***an insolvent SIG.***

4 ***(c) Notwithstanding subdivision (a), neither the fund nor the***
5 ***SIG Fund shall be liable for the payment of any penalties assessed***
6 ***for any act or omission on the part of any person other than the***
7 ***fund or the SIG Fund, respectively, including, but not limited to,***
8 ***the penalties provided in Section 132a, 3706, 4553, 4554, 4556,***
9 ***4557, 4558, 4601.5, 5814, or 5814.1.***

10 ***(d) The fund shall be a party in interest in all proceedings***
11 ***involving compensation claims against an insolvent stand-alone***
12 ***self-insurer whose compensation obligations have been paid or***
13 ***assumed by the fund. The fund shall have the same rights and***
14 ***defenses as the insolvent self-insurer, including, but not limited***
15 ***to, all of the following:***

16 ***(1) To appear, defend, and appeal claims.***

17 ***(2) To receive notice of, investigate, adjust, compromise, settle,***
18 ***and pay claims.***

19 ***(3) To investigate, handle, and deny claims.***

20 ***(e) The SIG Fund shall be a party in interest in all proceedings***
21 ***involving compensation claims against an insolvent self-insured***
22 ***group whose compensation obligations have been paid or assumed***
23 ***by the SIG Fund. The SIG Fund shall have the same rights and***
24 ***defenses as the insolvent self-insurer, including, but not limited***
25 ***to, all of the following:***

26 ***(1) To appear, defend, and appeal claims.***

27 ***(2) To receive notice of, investigate, adjust, compromise, settle,***
28 ***and pay claims.***

29 ***(3) To investigate, handle, and deny claims.***

30 ***(f) The Self-Insurer's Security Fund shall retain the workers'***
31 ***compensation obligations for every self-insured employer and SIG***
32 ***that either became insolvent, or was issued a notice of intent to***
33 ***revoke its certificate of consent to self-insure by the director, before***
34 ***July 1, 2014.***

35 ***(g) This section shall become operative on July 1, 2014.***

36 ***SEC. 19. Section 3744 of the Labor Code is amended to read:***

37 ***3744. (a) (1) The fund shall have the right and obligation to***
38 ***obtain reimbursement from an insolvent stand-alone self-insurer***
39 ***up to the amount of the self-insurer's workers' compensation***
40 ***obligations paid and assumed by the fund, including reasonable***

1 administrative and legal costs. This right includes, but is not limited
2 to, a right to claim for wages and other necessities of life advanced
3 to claimants as subrogee of the claimants in any action to collect
4 against the self-insured as debtor. For purposes of this section,
5 “insolvent *stand-alone* self-insurer” includes the entity to which
6 the certificate of consent to self-insure was issued, any guarantor
7 of the entity’s liabilities under the certificate, any member of a
8 self-insurance group to which the certificate was issued, and any
9 employer who obtained employees from a self-insured employer
10 under subdivision (d) of Section 3602.

11 (2) The Legislature finds and declares that the amendments
12 made to this subdivision by the act adding this paragraph are
13 declaratory of existing law.

14 *(b) The SIG Fund shall have the right and obligation to obtain*
15 *reimbursement from every member of the insolvent SIG, jointly*
16 *and severally, up to the amount of the self-insurer’s workers’*
17 *compensation obligations paid and assumed by the SIG Fund,*
18 *including reasonable administrative and legal costs. This right*
19 *includes, but is not limited to, a right to claim for wages and other*
20 *necessities of life advanced to claimants as subrogee of the*
21 *claimants in any action to collect against the self-insured as debtor.*

22 ~~(b)~~

23 *(c) The fund shall have the right and obligation to obtain from*
24 *the security deposit of an insolvent stand-alone self-insurer the*
25 *amount of the self-insurer’s compensation obligations, including*
26 *reasonable administrative and legal costs, paid or assumed by the*
27 *fund. Reimbursement of administrative costs, including legal costs,*
28 *shall be subject to approval by a majority vote of the fund’s*
29 *trustees. The fund shall be a party in interest in any action to obtain*
30 *the security deposit for the payment of compensation obligations*
31 *of an insolvent stand-alone self-insurer.*

32 *(d) The SIG Fund shall have the right and obligation to obtain*
33 *from the security deposit of an insolvent SIG the amount of the*
34 *SIG’s compensation obligations, including reasonable*
35 *administrative and legal costs, paid or assumed by the SIG Fund.*
36 *Reimbursement of administrative costs, including legal costs, shall*
37 *be subject to approval by a majority vote of the SIG Fund’s*
38 *trustees. The SIG Fund shall be a party in interest in any action*
39 *to obtain the security deposit for the payment of compensation*
40 *obligations of an insolvent self-insurer.*

1 ~~(e)~~

2 (e) The fund shall have the right to bring an action against any
3 person to recover compensation paid and liability assumed by the
4 fund, including, but not limited to, any excess insurance carrier of
5 the self-insured employer, and any person whose negligence or
6 breach of any obligation contributed to any underestimation of the
7 *stand-alone* self-insured employer's total accrued liability as
8 reported to the director.

9 (f) *The SIG Fund shall have the right to bring an action against*
10 *any person to recover compensation paid and liability assumed*
11 *by the SIG Fund, including, but not limited to, any excess insurance*
12 *carrier of the self-insured employer, and any person whose*
13 *negligence or breach of any obligation contributed to any*
14 *underestimation of the SIG's total accrued liability as reported to*
15 *the director.*

16 ~~(d)~~

17 (g) The fund may be a party in interest in any action brought
18 by any other person seeking damages resulting from the failure of
19 an insolvent *stand-alone* self-insurer to pay workers' compensation
20 required pursuant to this division.

21 (h) *The SIG Fund may be a party in interest in any action*
22 *brought by any other person seeking damages resulting from the*
23 *failure of an insolvent SIG to pay workers' compensation required*
24 *pursuant to this division.*

25 ~~(e)~~

26 (i) At the election of the Self-Insurers' Security Fund, venue
27 shall be in the Superior Court for the State of California, County
28 of Sacramento, for any action under this section. All actions in
29 which the Self-Insurers' Security Fund and two or more members
30 or former members of one self-insurance group are parties shall
31 be consolidated if requested by the Self-Insurers' Security Fund.

32 (j) *At the election of the SIG Security Fund, venue shall be in*
33 *the Superior Court for the State of California, County of*
34 *Sacramento, for any action under this section. All actions in which*
35 *the SIG Security Fund and two or more members or former*
36 *members of one self-insurance group are parties shall be*
37 *consolidated if requested by the SIG Security Fund.*

38 SEC. 20. Section 3745 of the Labor Code is amended to read:

39 3745. (a) The fund *and the SIG Fund* shall each maintain cash,
40 readily marketable securities, or other assets, or a line of credit,

1 approved by the director, sufficient to immediately continue the
2 payment of the compensation obligations of an insolvent
3 *stand-alone* self-insurer or insolvent SIG pending assessment of
4 the members. The director may establish the minimum amount to
5 be maintained by, or immediately available to, the fund for this
6 purpose.

7 (b) The fund may assess each of its members a pro rata share
8 of the funding necessary to carry out the purposes of this article.
9 *Funds obtained by assessments pursuant to this subdivision may*
10 *only be used for the purposes of this article.*

11 (c) *The SIG Fund may assess each of its members a pro rata*
12 *share of the funding necessary to carry out its obligations and the*
13 *purposes of this article. However, no member shall be assessed at*
14 *one time in excess of 1.5 percent of the benefits paid by the member*
15 *for claims incurred during the previous calendar year as a*
16 *self-insurer, and total annual assessments in any calendar year*
17 *shall not exceed 2 percent of the benefits paid for claims incurred*
18 *during the previous calendar year. Funds obtained by assessments*
19 *pursuant to this subdivision may only be used for the purposes of*
20 *this article.*

21 (e)

22 (d) The fund trustees shall certify to the director the collection
23 and receipt of all moneys from assessments, noting any
24 delinquencies. The fund trustees shall take any action deemed
25 appropriate to collect any delinquent assessments.

26 (e) *The SIG Fund trustees shall certify to the director the*
27 *collection and receipt of all moneys from assessments, noting any*
28 *delinquencies. The SIG Fund trustees shall take any action deemed*
29 *appropriate to collect any delinquent assessments.*

30 (f) *All initial assessments payable to the SIG Fund shall be due*
31 *and payable by May 1, 2014.*

32 SEC. 21. Section 3746 of the Labor Code is amended to read:

33 3746. (a) The fund shall annually contract for an independent
34 certified audit of the financial activities of the fund. An annual
35 report on the financial status of the fund as of June 30 shall be
36 submitted to the director and to each member, or at the election of
37 the fund, posted on the fund's Internet Web site.

38 (b) *The SIG Fund trustees shall annually contract for an*
39 *independent certified audit of the financial activities of the SIG*
40 *Fund. An annual report on the financial status of the SIG Fund as*

1 *of June 30 shall be submitted to the director and to each SIG Fund*
2 *member.*

3 ~~SECTION 1. It is the intent of the Legislature to enact~~
4 ~~legislation to establish a Self-Insured Group Security Fund for~~
5 ~~purposes of workers' compensation insurance.~~

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